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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,104	01/03/2002	Kelly A. Wilk	Wilk - 01	1685

7590

07/02/2002

Merrill N. Johnson
800 Harbour Drive
Naples, FL 34103

EXAMINER

SAKRAN, VICTOR N

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/035,104

Applicant(s)
WILK

Examiner
VICTOR SAKRAN

Art Unit
3677



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 3, 2002
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 3677

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-4, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stricklin U. S. Patent No. 5,639,244 in view of Raskas U. S. Patent No. 5,430,621.

Art Unit: 3677

Stricklin discloses Applicant's claimed device of a pair of shoe laces, with bi-colored designed for teaching children and adults that need help and the skill of tying the laces of their shoes, wherein each of said shoe laces comprising a woven shoe lace having first and second opposed ends, each of said ends is provided with a tip, and having sufficient length for tying a shoe to a user, wherein one half of each lace is defined by a different color such as red color, pink color, blue color or any suitable color for this purpose; see Figures 3-8; the Abstract; column 3, lines 47-64; column 4, lines 3-9, and 24-39; column 5, lines 1-20; claims 1-4, and the entire document, except that the shoe laces are formed of polyester woven (fiber). Raskas teaches the use of shoe laces which are formed of polyester woven (fibers) in a similar device assembly relates to articles having light emitting fibers or strands and in particular to a shoelace having light emitting strands throughout the shoelace; see Figures 1-6; column 1, lines 5-7; column 2, lines 47-60, and the entire document. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the shoelaces in Stricklin, of polyester fibers or any suitable material in the manner taught, disclosed and suggested by Raskas, especially, since such modification involves only routine skill in the art.

Furthermore, the particular type of material used to form shoelaces of polyester fibers is considered to be no more than an obvious matter of design choice within the skill in the art, since it has been held to be within the general skill of a worker in the art to select a known

Art Unit: 3677

material on the basis of its suitability for the intended use as a matter of obvious design choice; See *In Re Leshin*, 125 USPQ 416 .

As to the particular shape of the shoe lace is considered to be no more than an obvious matter of design choice, since the particular shape solves no stated problems and is fully capable of performing the stated function, i.e., tying laces for shoes, especially, since it has been held that a change in the shape of a prior art device is a design consideration within the skill in the art. See *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1954).


Regarding the claimed dimensions of the shoe lace and the tipped ends of the shoe laces as recited in claims 1, and 4. Even though, *Stricklin* does not specifically describe the claimed dimensions of the shoe laces and the tips thereof. However, “ it has been held that a change in the size of a prior art device is an obvious design consideration within the skill of the art”; see *In re Rose*, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Furthermore, the specific dimensions solve no stated problems and the dimensions of the shoe laces and the tips thereof shown by *Stricklin*, perform the function as specified in the claims in substantially the same way, and produces substantially the same results.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant's attention is directed to the art cited herein, as showing structure related to Applicant's disclosed invention .

Art Unit: 3677

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Sakran whose telephone number is (703) 308-2224. The examiner can normally be reached on Monday-Thursday from 6:30 AM - 5:00 PM.
6. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann, can be reached on (703) 308-4115. The fax phone number for this Group is (703) 872-9326 (before final) or (703) 872-9327 (after final). Customer Service fax can be reached at (703) 872-9325.
7. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.


VICTOR SAKRAN
PRIMARY EXAMINE
ART UNIT 3677

June 19, 2002